

## **PUBLIC HEALTH COUNCIL**

Meeting of the Public Health Council held Tuesday, January 18, 2005, 10:00 a.m., at the Massachusetts Department of Public Health, 250 Washington Street, Boston, Massachusetts. Public Health Council Members present were: Ms. Suzanne Thomson, Deputy Commissioner, Department of Public Health, Acting Chair, Ms. Phyllis Cudmore, Ms. Maureen Pompeo (arrived at 10:15a.m.), Mr. Albert Sherman, Ms. Janet Slemenda, Dr. Thomas Sterne, Mr. Gaylord Thayer, Jr., and Dr. Martin Williams. Commissioner Christine C. Ferguson and Mr. Manthala George, Jr., absent. Also in attendance was Attorney Donna Levin, General Counsel.

Acting Chair, Ms. Suzanne Thomson, announced that notices of the meeting had been filed with the Secretary of the Commonwealth and the Executive Office of Administration and Finance. Acting Chair Thomson also noted that there would be no staff presentation.

The following members of the staff appeared before the Council to discuss and advise on matters pertaining to their particular interests: Susan Lett, MD, MPH, Medical Director, Immunization Program, Division of Epidemiology and Immunization; Attorney James Ballin, Deputy General Counsel, Office of the General Counsel; and Lewis Howe, Legislative Director, Department of Public Health.

### **RECORDS:**

After consideration, upon motion made and duly seconded, it was voted (unanimously) [Ms. Pompeo not present to vote] to approve the Records of the Public Health Council Meeting of November 16, 2004.

### **PERSONNEL ACTIONS:**

In letters dated January 7, 2005, Val W. Slayton, MD, MPP, Chief Medical Officer, Tewksbury Hospital, Tewksbury, recommended approval of appointments and reappointments to the various medical and allied health staffs of Tewksbury Hospital. After consideration of the appointees' qualifications, upon motion made and duly seconded, it was voted (unanimously) [Ms. Pompeo not present to vote] That, in accordance with the recommendation of the Chief Medical Officer of Tewksbury Hospital, under the authority of the Massachusetts General Laws, chapter 17, section 6, the following appointments and reappointments to the various medical and allied health staffs of Tewksbury Hospital be approved for the period of January 1, 2005 to January 1, 2007 [Dr. Arthur Miller is approved for January 1, 2005 through June 30, 2005].

<b><u>APPOINTMENTS:</u></b>	<b><u>MASS. LICENSE NO.:</u></b>	<b><u>STATUS/SPECIALTY:</u></b>
Clifford Askinazi, MD	39796	Provisional Active Psychiatry
Arthur Miller, MD	80253	Provisional Active Psychiatry
<b><u>REAPPOINTMENTS:</u></b>	<b><u>MASS. LICENSE NO.:</u></b>	<b><u>STATUS/SPECIALTY:</u></b>
Krissie Connor, DO	207984	Affiliate Staff Internal Medicine
Victoria Knowlton, MS	131213	Allied Staff Nurse Practitioner
Thomas Martin, PhD	2122	Allied Staff Psychology

Steven Nisenbaum, PhD	3670	Allied Staff Psychology
Jean O'Farrell, MS, RNC	145299	Allied Staff Nurse Practitioner

In a letter dated January 10, 2005, Paul Romary, Executive Director, Lemuel Shattuck Hospital, Jamaica Plain, recommended approval of reappointments to the various medical and allied health staffs of Lemuel Shattuck Hospital. After consideration of the appointees' qualifications, upon motion made and duly seconded, it was voted (unanimously) [Ms. Pompeo not present to vote] That, in accordance with recommendation of the Executive Director of Lemuel Shattuck Hospital, under the authority of the Massachusetts General Laws, chapter 17, section 6, the following reappointments to the various medical and allied health staffs of Lemuel Shattuck Hospital be approved:

<b>REAPPOINTMENTS:</b>	<b>MASS. LICENSE NO.:</b>	<b>STATUS/SPECIALTY:</b>
Jeremy Sokolove, MD	211179	Consultant/Internal Medicine
Maitri Patel, MD	217414	Consultant/Psychiatry
Joel Pearlman, DMD	12623	Consultant/Dentistry
Scott Shikora, MD	57931	Consultant/Surgery
Patricia Clifford, PA	211	Allied Health Professional

**PROPOSED REGULATIONS: INFORMATIONAL BRIEFING ON AMENDMENTS TO 105 CMR 410.000: MINIMUM STANDARDS OF FITNESS FOR HUMAN HABITATION (STATE SANITARY CODE CH. II):**

Attorney James Ballin, Deputy General Counsel, Department of Public Health, presented the amendments to 105 CMR 410.000 to the Council. Attorney Ballin noted in part, "...On December 16, 2004, the Governor signed Chapter 417 of the Acts of 2004, entitled, *An Act Authorizing Water Submetering in Residential Tenancies (Act)*. This Act has now become law, codified as M.G.L.c.186§22, and will be effective March 16, 2005. The Act authorizes landlords of residential property to separately charge tenants for actual water and sewer service costs provided that all of the comprehensive requirements of the Act are met." Highlights of the Act:

- Prohibits water submetering unless the dwelling unit is separately submetered or, for single family rentals, the water usage is under the complete control of the tenant, to ensure that tenants are only charged for water actually used;
- Requires landlords to have licensed plumbers install any water submetering devices at the expense of the landlord;
- Requires landlords to certify in writing to the local board of health that the dwelling unit is in compliance with the requirements of the Act prior to separately charging for water or sewer service and to have a written agreement with tenants;
- Requires water conservation devices on all showerheads, sinks and toilets, at the landlord's expense, prior to separately charging for water or sewer service;

- Permits water submetering only in new tenancies created after the effective date of the Act, except that water submetering is not permitted in public housing dwelling units;
- Provides a process for tenants to report leaks, contest bills, and question the accuracy of water submeters and to only pay for water costs resulting from actual use;
- Requires landlords to remain as the water company customer and to be responsible for payment of water supplied by the water company;
- Prohibits landlords from shutting off water to a residential dwelling for non-payment of water or sewer costs but permits landlords to pursue all other legal remedies to collect bills, including deducting unpaid bills from security deposits;
- Authorizes the Department of Public Health to promulgate such additional regulations to the state sanitary code as it determines to be necessary to implement this section.

Staff noted that this Act nullifies the Department of Public Health's 1990 Advisory Ruling and requires the Community Sanitation Program to amend the Housing Code in order to authorize submetering....Staff believes that the only necessary amendment to the Housing Code is to specifically authorize landlords to separately charge for water and sewer costs in accordance with the requirements of the Act.

Staff further noted, "The main change in the proposed amendments is to authorize separate bills to tenants for water service, in Section 410.180, and for sewer service, in 410.300. Section 410.180 repeats the prohibition in the Act on shutting off water due to non-payment to ensure that landlords are aware of this important prohibition to protect public health. For purposes of clarification, two definitions from the Act, one for "Water Conservation Device" and one for "Water Submetering" are added using the exact same language contained in the Act. In addition, Section 410.351 is revised to add 'submetering devices' to the list of owner-installed optional equipment for which an owner is responsible for maintaining and Section 410.354 is amended to allow submetering of 'water' in accordance with the Act in addition to electricity and gas currently listed in this section. One other minor clarification added to this amendment is to include the word 'potable' prior to the word 'water' in 410.180 to clarify that landlords are required under the Housing Code to provide potable water to their residential rental dwelling units."

In closing, Atty. Ballin said, "...The Community Sanitation Program believes this is a well drafted piece of legislation. It is very comprehensive, provides tenants rights, and also very clearly prohibits the shutting off of water under any circumstances for non-payment...The amendments to the Sanitary Code do not do much more than specifically adopt the provisions in the Statute. The Community Sanitation Program will conduct one public hearing to solicit feedback from the public on these proposed amendments. Following this hearing, comments will be reviewed and addressed, the proposed regulations will be amended as appropriate, and a final set of regulations will be presented to the Public Health Council for promulgation."

**NO VOTE/INFORMATION ONLY**

## **REGULATIONS:**

### **REQUEST FOR FINAL PROMULGATION OF 105 CMR 220.000: REGULATIONS REQUIRING IMMUNIZATION OF STUDENTS BEFORE ADMISSION TO SCHOOL; AND 105 CMR 221.000: REGULATIONS PROMOTING AWARENESS OF MENINGOCOCCAL DISEASE AND VACCINE:**

Dr. Susan Lett, Medical Director, Immunization Program, presented the regulations 105 CMR 220.000 and 221.000 to the Council. She said in part, "...Since we were here last we proceeded with the notification process and conducted public hearings on December 7, 2004 and December 17, 2004 on the proposed amendments to 105 CMR 220.000: Immunization of Students before Admission to School, and 105 CMR 221.000: Promoting Awareness of Meningococcal Disease and Vaccine. No oral testimony was presented. However, three pieces of written testimony from five organizations were submitted on regulation 105 CMR 220.000 from CRCHA (The Charles River College Health Association, CHAND (College Health Associations of Nurse Directors), DYS (Department of Youth Services), MCAAP (Massachusetts Chapter of the American Academy of Pediatrics), and NECHA (New England College Health Association)."[The comments can be found in staff memorandum to the Public Health Council dated January 18, 2005].

Dr. Lett further noted that staff and all the groups that submitted testimony (noted above) support Senator Hart's amendment (Senate Docket Number 544) that would limit the meningococcal vaccination requirements of 221.000 to only newly enrolled students attending colleges or universities, who would be living in dormitories, or other comparable arrangements, and it would also allow a thirty-day grace period.

Council Member Sterne asked Dr. Lett about the status of Sen. Hart's amendment. Lewis Howe, Legislative Director for the Department of Public Health, stated to the Council that when the new legislative session begins, the amendment will be put through. It is in docket form. Council Member Sterne made further comments. In part, he said that it was not a surprise to him that everybody is in favor of the Hart Amendment, given that the original statute is a bad law and has to be revisited. He said that this is not a universal recommendation and there is no data that suggests people living at home benefit from vaccine etc.. He said he would not bore the Council with the same arguments that he had made at the November Council meeting. Council Member Thayer inquired if it would be wise to wait for more accurate information on the new conjugate vaccine before proceeding with the regulations. Dr. Lett responded that the Statute requires implementation of the regulations by August 2005. However, staff revised the information and waiver form to include information about the expected licensure of the conjugate meningococcal vaccine and its anticipated benefits. Dr. Lett said further that staff may revise the waiver form and that the colleges need the form by December. Atty. Howard Saxner, Deputy General Counsel, informed the Council that staff could change the waiver form at any time when new information is

available without coming back before the Public Health Council. However, the regulations themselves have to come before the Council before any changes can be made to them. And if Sen. Hart's amendment is passed staff will be back for Council approval to amend the regulations.

Dr. Sterne raised questions about the wording on question four (4) of the waiver form which states, "College freshmen, in particular those who live in residence halls or dormitories, are at a modestly increased risk for meningococcal disease as compared to individuals of the same age not attending college. The setting, combined with risk behaviors (such as alcohol consumption, exposure to cigarette smoke, sharing food or beverages, and activities involving the exchange of saliva), may be what puts college students at a greater risk for infection. The risk of meningococcal disease for other college students is not increased. However, meningococcal vaccine is a safe and efficacious way to reduce their risk of contracting this disease." Dr. Sterne stated in part, "...This paragraph strongly implies that college freshmen are at moderately increased risk for meningococcal disease. They are not. They are not statistically significantly at risk for meningococcal disease. That is frankly a misstatement at its worst, and deceptive at its least, and that is not an adequate enough adaption of the information in the information sheet to give somebody an educated choice."

Dr. Lett responded, "It reflects language in the vaccine information statement and in the other materials available from both the ACIP and the American College Health Association. This is how they translate all these statistically significant and non-significant risks into language for the lay reader." Dr. Sterne said somebody reading this statement would believe it is better to receive the vaccine. Dr. Alfred DeMaria, Assistant Commissioner, Bureau of Communicable Disease Control and State Epidemiologist, stated in part, "This statement is not meant to be deceptive. We are trying to balance the fact that it is a risk to certain freshmen, those living in dorms are at moderate increased risk and these constitute a large proportion of all freshmen. However, compared to freshmen living in dorms, freshmen not living in dorms do not have the higher risk." Dr. Sterne said, "Well, then you could just as easily say, college freshmen who live in residence halls or dormitories are at moderately increased risk. That's not hard to redo. You could also say that there isn't any evidence to date that college freshmen living elsewhere are at increased risk. You could have both those sentences in there, and that would be honest and direct...What I am saying is that somebody reading this paragraph will come out with the conclusion, supportable or not, that on balance it will be better to receive meningococcal vaccine, period...no matter where you live."

The Chair asked if this was a language disagreement. Dr. Lett added, "No, I am not in disagreement about the data that Dr. Sterne is speaking to, and in terms of the language, again, we have reflected what has been sort of tested and tried at both the national and the state level. I mean, we can relook at this and we can relook at this..."

Council Member Thayer, Jr., asked, "This is only true of freshmen? In other words, college sophomores are not at increased risk?" Dr. Sterne added, "Don't ask me why, 18 and 19 year olds are the ones that get this disease." Dr. DeMaria answered, "It may be the case that the exposure as freshmen protects you later on in your college career, so you can actually have exposure to bacteria without developing the disease. If you are fortunate, as most people are, of not developing the disease as freshman when you live in the dormitory, then you have some protection; but if you

don't live in the dorm, that might not be the case." Dr Lett agreed, stating in part, "...when you are colonized, you develop some serologic protection that lasts for a couple of years..."

Dr. Williams, Council Member said, "When you open a piece of paper, sometimes you don't see the horror that this disease causes some individuals. From a public health point of view you can say, well, out of five hundred thousand kids, there are going to be five that are going to get this disease. Trust me, people who get this disease, a lot of times it affects the rest of their lives. I have seen someone 23 years old die from this disease. They talk about, statistically, 18, 19, some people in their twenties, I had a friend who had a friend die in their early thirties. That's the hard part. You talk about risk versus benefit, and also how horrible, this disease can cause disability as far as losing limbs, deafness, dying. Keep that in mind when you are changing a couple of words or another, that, by and large, from my point of view, since I have seen people die from this disease, I would just as soon a few extra people get the vaccine, although the chances are less than one in a hundred thousand of getting it, as opposed to having parents having to live with a kid that is disabled for the rest of their lives."

Ms. Lett, continued, "The second component are the proposed regulations to 105 CMR 221.000 which are the regulations intended for us to be developing educational materials for their use in a variety of settings, including camps, child care settings, and school, in order to let parents know about the risk of meningococcal disease and the benefits of the vaccine. We only received testimony from one group. That was the Massachusetts Chapter of the AAP, and basically their concern was the information included in the materials should be medically sound, and reflect clear scientific data, and it should reflect the limitations of the current vaccine, and really what the national recommendations were, and given that that the complexity of a balanced message be struck, that the language would not be easily understandable, and they offered and asked to work with the Department in order to help craft that language, and those materials are still in development, which is why you don't have copies of them, but MDPH will work with the MCAAP, and any other pertinent groups, to develop the most appropriate language, given the limitations of the current vaccine and the national recommendations for use, and will probably have a number of groups, in addition to the AAP, review the language in order to make sure that it is understandable, and that is our intention. And the other concern that they had was that all information be approved and developed by the Department and, in fact, the regulatory language states that all the information provided to students or parents must be approved or developed by DPH. That's all the comments on that particular set of regulations."

In closing, Dr. Lett said, "With the specificity of the statutory language, we did our best to try to incorporate all the changes, and we request that the Public Health Council approve the promulgation of the amended regulations to 105 CMR 220.000, which is Attachment A, the new regulations 105 CMR 221.000 which is Attachment B, and the other attachments included for your review are the copy of the waiver, and a copy of all the testimony, written testimony that was submitted."

It was noted that typos on pages 3 and 6 that state the regulation number as 721.000 instead of 221.000 should be corrected and anywhere else the typos are throughout the staff memorandum and regulations.

Deputy Commissioner, Suzanne Thomson, Acting Chair: “Why don’t we handle these regulations separately. Let’s take the second one first 105 CMR 221.000, Regulations Promoting Awareness of Meningococcal Disease and Vaccine. Do we have a motion to approve?” Dr. Sterne moved to approve the regulations.

After consideration, upon motion made and duly seconded, it was voted (unanimously) to approve the Request for **Final Promulgation of 105 CMR 221.000: Regulations Promoting Awareness of Meningococcal Disease and Vaccine**; that a copy be forwarded to the Secretary of the Commonwealth; and that a copy be attached and made a part of this record as **Exhibit No. 14,802**.

Deputy Commissioner Thomson said, “And 105 CMR 220.000, Regulations Requiring Immunization of Students Before Admission to School. Do I hear a motion on that?” Dr. Sterne said in part, “I would like to move to amend this, otherwise I am going to vote against this. I would like to move that the information waiver portion of this be re-amended to make it clearer to prospective clients the true level of scientific information, especially since we just approved the information regulation...and in particular to the formation of the answer to question four (4) in the information sheet, likewise the answer to the last question in the information sheet, which states the mandatory nature of the current law but, at this point, doesn’t include or allow for any information. It says, ‘if there is, however, an amendment currently in the process that may change the law – may change the law to require this only of dormitory inhabitants.’ Discussion followed, whereby it was noted that the waiver sheet could be amended administratively. Dr. Sterne said, “I move on the first portion, that the information sheets be modified at least in part as I have described and also for some of the modifications that may result.”

After consideration, upon motion made and duly seconded, it was voted (unanimously) to approve Dr. Sterne’s motion that the waiver information sheets be amended administratively to include his two recommendations as noted above.

Acting Chair Thomson said, “Do I have a motion on the regulations, 105 CMR 220.000?” Council Member Sherman moved to approve the regulations. After consideration, upon motion made and duly seconded, it was voted (Acting Chair Thomson, Ms. Cudmore, Ms. Pompeo, Ms. Slemenda, Mr. Thayer, Jr., and Dr. Williams in favor; Mr. Sherman and Dr. Sterne opposed ) to approve the **Request for Final Promulgation of 105 CMR 220.000: Regulations Requiring Immunization of Students Before Admission to School**; that the final regulations be forwarded to the Secretary of the Commonwealth; and that a copy be attached and made a part of this record as **Exhibit Number 14,802**. Note: Commissioner Ferguson and Mr. George, Jr. absent.

The meeting adjourned at 10:45 a.m.

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Suzanne Thomson, Deputy Commissioner  
Acting Chair

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